

SENATE SUBSTITUTE

FOR

HOUSE BILL NO. 339

AN ACT

To repeal section 392.460, RSMo, and to enact in lieu thereof one new section relating to telecommunications.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Section 392.460, RSMo, is repealed and one new
2 section enacted in lieu thereof, to be known as section 392.460,
3 to read as follows:

4 392.460. 1. As used in this section, the following words
5 shall mean:

6 (1) "Alternative service provider", any person or entity
7 providing local voice services, or any person or entity allowing
8 another person or entity to use its equipment or facilities to
9 provide local voice services, or any person or entity securing
10 rights to select an alternative service provider for a property
11 owner or developer. Alternative service provider shall not
12 include an incumbent local exchange carrier providing service
13 within its commission-approved local exchange service area;

14 (2) "Greenfield area", real property that requires entirely
15 new construction of local loops or local connectivity in addition
16 to the deployment of any necessary switching and other network
17 equipment to serve new real property developments;

18 (3) "Local voice service" or "local voice services", any
19 two-way voice service offered through any form of technology that

1 is capable of placing calls to or receiving calls from a provider
2 of basic local telecommunications services, including voice over
3 internet protocol services;

4 (4) "Owner or developer", an entity that owns or develops a
5 business or residential property, any condominium association or
6 homeowner's association thereof, any person or entity having
7 ownership in or control over the property, or any person acting
8 on behalf of such owner or developer;

9 (5) "Real property", any single tenant or multitenant
10 business or residential property, subdivisions, condominiums,
11 apartments, office buildings, or office parks.

12 2. No telecommunications company authorized by the
13 commission to provide or offer basic local or basic interexchange
14 telecommunications service within the state of Missouri on
15 January 1, 1984, shall abandon such service until and unless it
16 shall demonstrate, and the commission finds, after notice and
17 hearing, that such abandonment will not deprive any customers of
18 basic local or basic interexchange telecommunications service or
19 [access thereto] access to local voice service and is not
20 otherwise contrary to the public interest.

21 3. Notwithstanding other provisions of this chapter or
22 chapter 386, a local exchange carrier obligated under this
23 section to serve as the carrier of last resort in greenfield
24 areas shall automatically be relieved of such obligation and
25 shall not be obligated to provide basic local voice service or
26 any telecommunications service to any occupants of real property
27 if the owner or developer of the real property, or a person
28 acting on behalf of the owner or developer of real property,

engages in any of the following acts:

(1) Permits an alternative service provider to install its facilities or equipment used to provide local voice services based on a condition of exclusion of the local exchange carrier during the construction phase of the real property;

(2) Accepts or agrees to accept incentives or rewards from an alternative service provider that are contingent upon the provision of any or all local voice services by one or more alternative service providers to the exclusion of the local exchange carrier; or

(3) Collects from the occupants or residents of the real property mandatory charges for the provision of any local voice service provided by an alternative service provider to the occupants or residents in any manner, including, but not limited to, collection through rent, fees, or dues.

4. The local exchange carrier relieved of its carrier of last resort obligation to provide basic local telecommunications service to the occupants of real property under subsection 3 of this section shall notify the commission in writing of that fact within one hundred twenty days after receiving knowledge of the existence of such fact.

5. A local exchange carrier that is not relieved of its carrier of last resort obligation under subsections 2 and 3 of this section may seek a waiver of its carrier of last resort obligation from the commission for good cause shown based on the facts and circumstances of the provision of local voice service or internet access services or video services to a particular real property. Upon petition for such relief, notice shall be

1 given by the local exchange carrier at the same time to the
2 relevant owner or developer. The commission shall make a
3 determination concerning the petition on or before ninety days
4 after such petition is filed, unless the commission determines
5 that good cause exists to delay the determination for an
6 additional ninety days and that such delay is not likely to have
7 a materially adverse effect upon consumers of telecommunications
8 services.

9 6. If a local exchange carrier is relieved of its carrier
10 of last resort obligation under subsection 3 or 5 of this
11 section, the owner or developer shall notify all occupants and
12 any subsequent owner of the specific real property of the
13 following:

14 (1) That the incumbent local exchange carrier does not have
15 facilities installed to serve the specific real property, and
16 that such carrier has been relieved of its carrier of last resort
17 obligations; and

18 (2) The name of the person that will be providing local
19 telecommunications service to the real property, and the type of
20 technology that will be used to provide such service.

21 7. If all conditions described in subsection 3 and the
22 conditions that form the basis for relief under subsection 5 of
23 this section cease to exist at the property, no company is
24 providing local voice service there, and the owner or developer
25 requests in writing that the local exchange carrier make local
26 voice service available to occupants of the real property and
27 confirms in writing that all conditions described in subsections
28 3 and 5 of this section have ceased to exist at the property, the

1 carrier of last resort obligation under this section shall again
2 apply to the local exchange carrier at the real property. The
3 local exchange carrier shall provide notice to the commission
4 that it is assuming the carrier of last resort obligation. The
5 local exchange carrier may require that the owner or developer
6 pay the local exchange carrier in advance a reasonable fee to
7 recover costs that exceed the costs that would have been incurred
8 to construct or acquire facilities to serve customers at the real
9 property initially. The commission may verify that the fee
10 enables the local exchange carrier to recover its costs that
11 exceed the costs that would have been incurred to construct or
12 acquire facilities to serve customers at the real property
13 initially, including, but not limited to, amounts necessary to
14 install or retrofit any facilities or equipment, to cut or trench
15 sidewalks and streets, and to restore roads, sidewalks, block
16 walls, or landscapes to original conditions. The local exchange
17 carrier shall have a reasonable period of time following the
18 request from the owner or developer to make arrangements for
19 local voice service availability.

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21 If the conditions described in subsection 3 of this section or
22 the conditions that form the basis for relief under subsection 5
23 of this section again exist at the real property, the relief in
24 subsection 3 or 5 of this section shall again apply.

25 8. When real property is located in a greenfield area, a
26 carrier of last resort shall not automatically be excused from
27 its obligations under subsection 3 of this section unless the
28 alternative service provider possesses or will possess at the

1 time of commencement of service the capability to provide local
2 voice service or the functional equivalent of such service
3 through any form of technology.

4 9. If an owner or developer of real property permits an
5 alternative service provider to install its facilities or
6 equipment used to provide local voice service to such property
7 based on a condition of exclusion of the local exchange carrier,
8 the owner or developer shall provide written notice to the
9 purchaser of any such real property that there is an exclusion of
10 that local exchange carrier and that the alternative service
11 provider is the exclusive provider of service to such property.

12 10. An incumbent local exchange carrier shall have the
13 right to require a payment from an owner or developer in cases
14 where the costs of extending facilities to serve a multi tenant
15 business or residential property, including, but not limited to,
16 apartments, condominiums, subdivisions, office buildings, or
17 office parks are not economically reasonable. The terms and
18 conditions applicable to such payments shall be specified in the
19 incumbent local exchange carrier's tariffs. An incumbent local
20 exchange carrier shall not be obligated to provide local voice
21 service or any other telecommunications service without payment
22 specified in the incumbent local exchange carrier's tariff.

23 11. Notwithstanding other provisions of this chapter or
24 chapter 386, a telecommunications company may meet its carrier of
25 last resort obligations and its obligations to provide or offer
26 basic local or basic interexchange telecommunications service by
27 providing local voice service using any technology. If a
28 telecommunications company uses a wireless technology, such

1 company shall meet such obligations by using a technology that
2 provides 911 caller location technology that meets or exceeds
3 wireless Phase II enhanced 911 rules requirements, as adopted by
4 the Federal Communications Commission.

5 12. Any local exchange carrier relieved of its carrier of
6 last resort obligation in a particular area under subsection 3 or
7 5 of this section shall not be deemed to have lost its general
8 designation as carrier of last resort for essential local
9 telecommunications service outside that area for purposes of
10 subsection 5 of section 392.248.

11 13. When a local exchange carrier is relieved of the
12 carrier of last resort obligation to serve in a designated area,
13 in no instance shall the carrier of last resort obligation be
14 transferred to any alternative service provider or provider of
15 local voice service, including interconnected voice over internet
16 protocol service in that designated service area.

17 14. Notwithstanding other provisions of this chapter or
18 chapter 386, any telecommunications company may, upon notice to
19 the commission, elect to no longer be designated as a carrier of
20 last resort for any telecommunications service within any county
21 with a charter form of government and with more than eight
22 hundred thousand inhabitants, any city not within a county, and
23 any home rule city with more than four hundred thousand
24 inhabitants and located in more than one county. Upon such
25 election, a telecommunications company shall not be required to
26 provide or offer basic local or basic interexchange
27 telecommunications service and may provide local voice service
28 using any technology.

1 15. A petition may be submitted to the registered agent for
2 the original carrier of last resort to make local voice service
3 available if the exclusive contract with the alternative service
4 provider materially and adversely changes or local voice services
5 are no longer being provided. Such petition shall be submitted by
6 fifty percent plus one of the residents within the exclusive
7 contract area. After receipt of the petition, the local exchange
8 carrier shall respond to such petition within thirty days.

9 16. Notwithstanding any other provision of this section or
10 other law to the contrary, no telecommunications company shall
11 receive state high-cost universal service fund support in a high-
12 cost area as described under section 392.248 for any area where
13 such company has been relieved of its carrier of last resort
14 obligation under this section; however, such company shall not be
15 ineligible to receive state high-cost universal service fund
16 support in other areas where it retains the carrier of last
17 resort obligation.